

In the Matter of the Proposed Amendments)
To the Missouri Universal Service Fund Rules) Case No. TX-2005-0460

¹ In the Matter of Lifeline and Link-Up, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302 (2004) (“*Lifeline/Link-Up Report and Order*”).

private, proprietary information. Moreover, the Commission has correctly noted that “there is a broad array of information which may be protected under federal or state statutes or case law.”² The Commission has also long recognized “the need to protect confidential and proprietary information”³ For these reasons, SBC Missouri recommends that the Commission make two changes to the language it proposes in this amendment. Both would minimize the potential for any unwarranted disclosure of company-specific information.

First, the rule should make clear that the requisite approval and authorization for release of records containing company-specific information must come from this Commission, not the board. Notably, adopting this suggestion would be consistent with the Commission’s own statutory obligation to adequately protect company-specific information. Section 386.480, RSMo 2000 provides in relevant part:

No information furnished to the commission by a corporation, person or public utility, except such matters as are specifically required to be open to public inspection by the provisions of this chapter, or chapter 610, RSMo, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. (emphasis added)

When the legislature enacted the MoUSF statute and directed that the board be comprised of “the members of the [C]ommission and the public counsel” (Section 392.248, RSMo 2000), the legislature could have enacted an exception to then-existing Section 386.480 to allow disclosure of company-specific information in the MoUSF context when authorized by the board (rather than the Commission). However, the legislature did not do so. Consequently, the duty

² In the Matter of the Petition of Southwestern Bell Telephone Company for a Determination that it is Subject to Price Cap Regulation Under Section 392.245, RSMo Supp 1996, Case No. TO-97-397, Report and Order, 1997 Mo. PSC Lexis, 6 Mo. P.S.C. 3d 493 (1997), n. 8.

³ In the Matter of the Request of Southwestern Bell Telephone, L.P., d/b/a SBC Missouri for a Waiver of Certain Requirements of 4 CSR 240-29.040(4), Case No. TE-2006-0053, Order Directing Filing and Adopting Protective Order, August 10, 2005, p. 2.

imposed directly upon the Commission by Section 386.480 should thus be reflected in the Commission's MoUSF rules.

Second, the rule should provide that the company whose information is involved will be provided an opportunity to be heard (and/or object) before any final decision is made that would approve or authorize the records containing such information being treated as open records. Depending on the type of information involved, records containing company-specific information may well be "[r]ecords which are protected from disclosure by law."⁴ Further, the Commission has long embraced the principle that it is "proper procedure" to provide notice to a party of an intent to disclose confidential information so as to allow that party an opportunity to object to disclosure.⁵ In fact, the Commission's standard protective order used in cases pending before the Commission prevents any disclosure of proprietary or highly confidential information except to specified persons, and further ensures that a party shall be notified and allowed to take appropriate action before any of its proprietary and/or highly confidential information is disclosed to a third party.⁶

Consequently, SBC Missouri urges the Commission to add the phrase "following notification to and an opportunity to be heard by the company" to the end of the proposed amendment. As a result, the entirety of the present rule, as modified by the Commission's proposed amendment and SBC Missouri's proposed further amendment, would read as follows:

⁴ Section 610.021(14) RSMo 2000.

⁵ In the Matter of the Petition of Southwestern Bell Telephone Company for a Determination that it is Subject to Price Cap Regulation Under Section 392.245, RSMo Supp 1996, Case No. TO-97-397, Report and Order, 1997 Mo. PSC Lexis, 6 Mo. P.S.C. 3d 493 (1997) (noting that the Attorney General, which had filed a motion seeking access to financial surveillance reports of Southwestern Bell Telephone Company, had "followed proper procedure by filing its motion, which gave SWBT an opportunity to object to the disclosure of this information").

⁶ Under the terms of the Commission's standard protective order, before a party responding to a data request provides confidential information concerning another party, the party responding to the data request "shall notify the other party of the intent to disclose the information," at which time "[t]he other party may then choose to designate the material or information as HIGHLY CONFIDENTIAL or PROPRIETARY under the provisions of this Protective Order."

“Books and records of the Fund Administrator shall be open records in accordance with Chapter 610, RSMo. 2000 and shall be audited on an annual basis by an independent auditor selected by the board. Records containing company-specific information shall not be open records unless release is approved and authorized by the commission following notification to and an opportunity to be heard by the company.”

4 CSR 240-31.050(2)(D)(1):

By this proposed new rule, the Commission would require that when a telecommunications company provides low-income customer or disabled customer discounted wholesale services to a reseller, the telecommunications company “must obtain a certification from the reseller that it is complying with all commission requirements governing the low-income customer or disabled customer programs.” SBC Missouri does not oppose the proposed rule, so far as it goes – however, the rule should also impose an affirmative, reciprocal duty upon the reseller to provide a certification when requested by the telecommunications company.

The policy goals of the proposed rule are two-fold: first, that it is appropriate that a reseller assume a specific MoUSF compliance obligation, and second, that it is also appropriate for the reseller to provide documentary evidence attesting that it is meeting that obligation. These goals would be more likely achieved were the reseller specifically required to provide certification when requested. Whether a reseller is “in compliance” with the Commission’s MoUSF rules - and can demonstrate it - are matters uniquely within the control of the reseller, not the telecommunications company that is merely providing the resold service. A telecommunications company should not be responsible if a reseller is either unwilling or unable to “provide” the certification that the telecommunications carrier is obligated by law to “obtain” from it.

Another consideration warrants adopting SBC Missouri’s recommendation. The Commission’s proposed further amendment would add a new subsection (D)(2) requiring

resellers to “maintain records to document compliance with all Commission requirements for three years.” SBC Missouri supports this further amendment. More to the present point, however, is that a reseller meeting this compliance requirement should have no difficulty providing a certification of its compliance when requested by the telecommunications company.

Consequently, SBC Missouri suggests adding the following clause to the proposed sentence: “and such reseller must provide a certification to the telecommunications company upon request.” The entirety of proposed Rule 31.050(2)(D)(1) would thus provide as follows:

“If a telecommunications company provides low-income customer or disabled customer discounted wholesale services to a reseller, it must obtain a certification from the reseller that it is complying with all commission requirements governing the low-income customer or disabled customer programs, and such reseller must provide a certification to the telecommunications company upon request.”

4 CSR 240-31.050(3)(E):

This proposed new rule is comprised of two sentences. The second sentence would provide that “[v]erification procedures may include, but are not limited to, compliance with federal verification requirements, random beneficiary surveys, periodic submission of documentation showing participation in qualifying programs or periodic self-certification updates.” The reference to “compliance with federal verification requirements” should be deleted. The FCC has determined “to allow states that administer their own Lifeline/LinkUp programs the flexibility to design and implement their own verification procedures to validate consumers’ continued eligibility.”⁷ The FCC’s rules thus provide that “eligible telecommunications carriers in states that mandate state Lifeline support must comply with state verification procedures to validate consumers’ continued eligibility for Lifeline.” 47 CFR §

⁷ *Lifeline/Link-Up Report and Order*, para. 34. On the other hand, eligible telecommunications carriers in states that do not mandate state Lifeline support “must implement procedures to verify the continued eligibility of a statistically valid random sample of their Lifeline customers to verify continued eligibility.” 47 CFR § 54.410(c)(2).


54.410(c)(1). For these reasons, MoUSF low-income verification procedures should not include compliance with federal verification requirements. SBC Missouri agrees that the remainder of the second sentence is appropriate and should be adopted, as follows:

“Verification procedures may include, but are not limited to, random beneficiary surveys, periodic submission of documentation showing participation in qualifying programs or periodic self-certification updates.”

In sum, SBC Missouri respectfully submits the foregoing comments to the Commission and requests that the Commission implement them in its final rules adopted in this proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on September 1, 2005.


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